

UNIT 51 MONITOR SUBCONTRACT MANAGEMENT

September 2002

(FAC 2001-09)

Overall Duty	Monitor contractor subcontract management in accordance with prime contract requirements.
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Overall Conditions	Given acquisition planning, a contract, and prime contractor subcontracting.
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Overall Standard	Assure that the contractor complies with all subcontracting requirements in the contract.
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Part A: Advanced Notification and Consent to Subcontracts

Sub-Duty	Determine whether consent to subcontract is required and whether it should be granted.
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Additional Conditions	Given a contract with a Subcontracts clause and a proposed subcontract.
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Sub-Duty Standard	Require the contractor to obtain consent to subcontract when required by the contract. Review contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.
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Part B: Purchasing System Reviews

Sub-Duty	Review the contractor's purchasing system.
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Additional Conditions	Given a contract subject to purchasing system review.
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Sub-Duty Standard	Determine whether and when to review the contractor's purchasing system. Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests.
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Part C: Make-Or-Buy Plans

Sub-Duty	Monitor contractor compliance with make-or-buy plans.
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Additional Conditions	Given a contract with a make or buy plan.
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Sub-Duty Standard	Accurately determine whether changes in the plan will affect contract pricing, performance, or implementation of socio-economic policies. Changes should not be approved unless the benefits to the Government outweigh the costs involved.
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Part D: Small Business Subcontracting

Sub-Duty	Enforce contract terms and conditions relating to small business subcontracting requirements.
Additional Conditions	Given a contract that includes small business subcontracting requirement and information on subcontract placement.
Sub-Duty Standard	Correctly determine compliance with subcontracting goals, plans, and requirements. When applicable, assess liquidated damages under the FAR Liquidated Damages – Subcontracting Plan clause or award an incentive under the FAR Incentive Subcontracting Program clause.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
9.402(a)		Consent only to subcontracts with responsible concerns.
9.405-2		Restrictions on subcontracting.
15.404-3		Subcontract pricing considerations.
15.407-2		Make-or-buy programs.
19.705-6		Post-award responsibilities of the Contracting Officer for subcontracting plans.
19.705-7		Liquidated damages.
19.706		Responsibilities of the cognizant Administrative Contracting Officer.
19.707(a)(4)		Small Business Administration may evaluate subcontracting plans.
35.009		Subcontracting research and development effort.
44.2		Consent to subcontracts.
44.3		Contractors' purchasing systems reviews.
52.209-6		Restrictions on subcontracting with excluded sources.
52.215-9		Changes or additions to make-or-buy program.
52.219-8		Utilization of small business concerns
52.219-9		Small business subcontracting plan.
52.219-10		Incentive Subcontracting Program.
52.219-12		Special 8(a) Subcontract Conditions.
52.219-14		Limits on amount of subcontracting.
52.219-16		Limitations on subcontracting.
52.219-16		Liquidated damages – subcontracting plan.
52.219-25		Small disadvantaged business participation program – disadvantaged status and reporting.
52.219-26		Small disadvantaged business participation program – incentive subcontracting.
52.244-2		Subcontracts.
52.244-5		Competition in subcontracting.
52.245-18		Liability for the facilities.

Other KSA's

1. Knowledge of essential elements of a contract.

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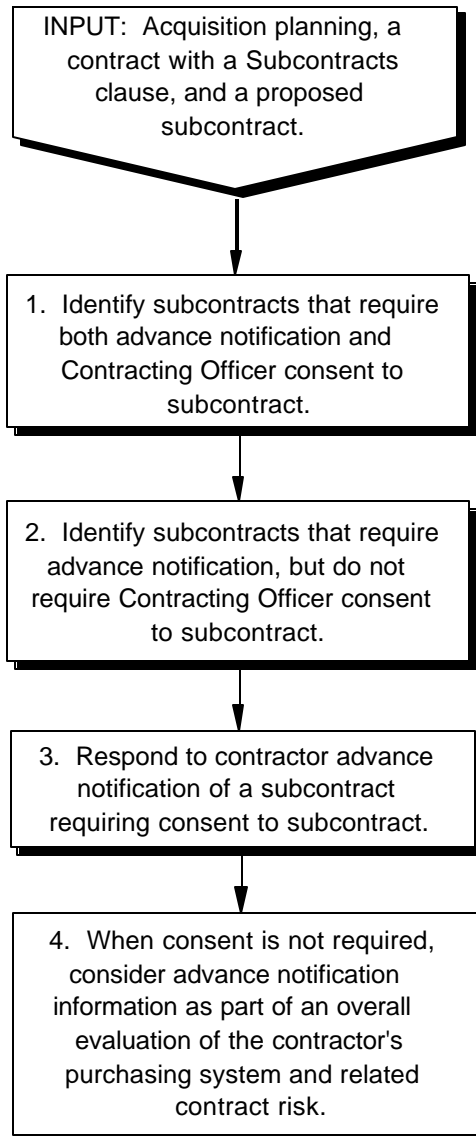
2. Knowledge of legal principles for interpreting the language of a contract.
3. Knowledge of contract clauses and legal principles regarding the contractor's rights and duties under a contract.
4. Knowledge that privity of contract exists between the prime contractor and its subcontractors, but does not exist between the Government and any subcontractor.
5. Ability to read and understand contract requirements.
6. Ability to conscientiously attend to the details of administering contract requirements.
7. Ability to work with contractors on issues relating to the proper interpretation of contract requirements.
8. Ability to be open to change and new information relating to contractor performance.
9. Ability to satisfy customer expectations.
10. Ability to identify problems, determine the relevance of available information, and generate alternatives.
11. Ability to analyze information and make the correct inferences concerning contract requirements.
12. Ability to make sound, well-informed, and objective business decisions based on the contract performance information available.
13. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

UNIT 51 MONITOR SUBCONTRACT MANAGEMENT

Part A: Advanced Notification and Consent to Subcontracts

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Part A: Advanced Notification and Consent to Subcontracts

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Tasks	Related Standards
1. Identify subcontracts that require both advance notification and Contracting Officer consent to subcontract.	<p>Clauses that require Contracting Officer consent to subcontract also require advance notification.</p> <ul style="list-style-type: none"> • Most frequently, consent is required by the FAR Subcontracts clause in the contract. When the contract includes the Subcontracts clause (FAR 52.244-2) and: <ul style="list-style-type: none"> - The contract contains the Special Test Equipment clause (FAR 52.245-18), the clause does not apply to subcontracts for special test equipment. - Exempts specific subcontracts, the clause does not apply to those subcontracts. - Is fixed-price, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if specifically required elsewhere by the clause. - The contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract (unless otherwise exempted) that: <ul style="list-style-type: none"> ? Is of the cost-reimbursement, time-and-materials, or labor-hour type; or ? Is fixed-price and exceeds the appropriate agency threshold established by the clause. - The contractor has an approved purchasing system, consent is not required unless the clause includes a specific consent requirement for that subcontract. • Occasionally, a contract special provision will require consent to subcontract.

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Part A: Advanced Notification and Consent to Subcontracts

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Tasks	Related Standards
2. Identify subcontracts that require advance notification, but do not require Contracting Officer consent to subcontract.	<p>Look for clauses such as the following:</p> <ul style="list-style-type: none">• The basic Subcontracts clause (FAR 52.244-2) does not require advance notification unless consent is required. However, Alternates I and II require notification reasonably in advance of entering into any:<ul style="list-style-type: none">- Cost-plus-fixed-fee subcontract; or- Fixed-price subcontract that exceeds the threshold established by the Alternate.• The Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment clause (FAR 52.209-6) requires a corporate officer or a designee to notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment.

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Part A: Advanced Notification and Consent to Subcontracts

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Tasks	Related Standards
3. Respond to contractor advance notification of a subcontract requiring consent to subcontract.	<p>The cognizant Contracting Officer may grant consent or cite reasons for denying consent. Before granting consent:</p> <ul style="list-style-type: none">• Review the contractor's notification and supporting data to ensure that the proposed subcontract is:<ul style="list-style-type: none">- Appropriate for the risks involved;- Consistent with current policy; and- Consistent with sound business judgment.• Look for factors that preclude consent, such as:<ul style="list-style-type: none">- A cost-plus-fixed-fee subcontract with a fee that exceeds statutory limits;- A cost-plus-a-percentage-of-cost subcontract;- A subcontract which obligates the Contracting Officer to deal directly with the subcontractor;- A subcontract that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or- Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts.• Consider the answers to the questions in FAR 44.202-2.

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Part A: Advanced Notification and Consent to Subcontracts

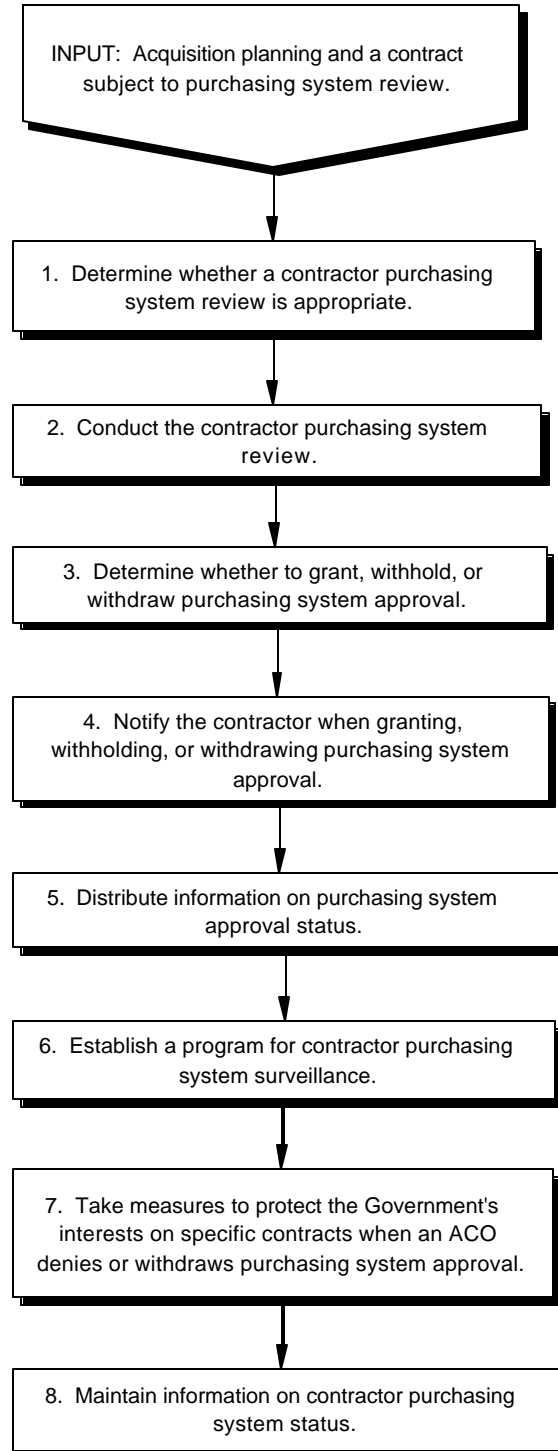
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Tasks	Related Standards
4. When consent is not required, consider advance notification information as part of an overall evaluation of the contractor's purchasing system and related contract risk.	<p>Advance notification under FAR 52.244-2 requires the contractor to provide information relevant to evaluating the appropriateness of the subcontract action and any related risk:</p> <ul style="list-style-type: none">• A description of the supplies or services to be subcontracted;• Identification of the type of subcontract used;• Identification of the proposed subcontractor; and• The proposed subcontract price. <p>Advance notification under FAR 52.209-6 requires the contractor to provide:</p> <ul style="list-style-type: none">• The name of the subcontractor;• The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;• The compelling reason(s) for doing business with the subcontractor; and• The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests.

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Part B: Purchasing System Reviews

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Part B: Purchasing System Reviews

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Tasks	Related Standards
1. Determine whether a contractor purchasing system review is appropriate.	<p>The ACO must determine the need for a contractor purchasing system review (CPSR) based on contractor's:</p> <ul style="list-style-type: none">• Past performance;• Subcontract volume;• Subcontract complexity; and• Subcontract dollar value. <p>Perform a review to determine if a CPSR is needed when:</p> <ul style="list-style-type: none">• A contractor's sales to the Government are expected to exceed \$25 million (or other agency threshold) during the next 12 months, excluding:<ul style="list-style-type: none">- Competitively awarded firm-fixed-price contracts;- Competitively awarded fixed-price with economic price adjustment contracts; and- Sales of commercial items.• Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. <p>Once an initial determination has been made on the need for a CPSR, at least every three years the ACO shall determine whether a purchasing system review is necessary.</p>

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Tasks	Related Standards
2. Conduct the contractor purchasing system review.	<p>A CPSR requires an evaluation of the contractor's purchasing system.</p> <ul style="list-style-type: none">• Unless segregation of subcontracts is impracticable, this evaluation must not include subcontracts exclusively for support of Government contracts that are:<ul style="list-style-type: none">- Competitively awarded firm-fixed-price;- Competitively awarded fixed-price with economic price adjustment; or- Awarded for commercial items.• The CPSR should address the same considerations listed in FAR 44.202-2 for consent to subcontract evaluations.• Give special attention to:<ul style="list-style-type: none">- The degree of price competition obtained;- Pricing policies and techniques;- Methods of evaluating subcontractor responsibility;- Treatment accorded affiliates and other concerns having close working arrangements with the contractor;- Policies and procedures pertaining to small business concerns, including veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;- Planning, award, and management of major subcontract programs;- Compliance with Cost Accounting Standards in awarding subcontracts;- Appropriateness of types of contracts used; and- Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

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Part B: Purchasing System Reviews

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Tasks	Related Standards
3. Determine whether to grant, withhold, or withdraw purchasing system approval.	<p>The ACO is responsible for contractor purchasing system approval.</p> <ul style="list-style-type: none">• Approve a purchasing system only after determining that the contractor's purchasing policies and practices:<ul style="list-style-type: none">- Are efficient; and- Provide adequate protection of the Government's interests.• Withhold or withdraw approval when:<ul style="list-style-type: none">- There are major weaknesses; or- The contractor is unable to provide sufficient information upon which to make an affirmative determination.• Withdraw approval at any time it is determined there has been deterioration of the contractor's purchasing system or to protect the Government's interest.• Withhold or withdraw approval when there is a recurring noncompliance with requirements, including but not limited to:<ul style="list-style-type: none">- Cost or pricing data;- Implementation of cost accounting standards;- Advance notification as required by the prime contracts; or- Small business subcontracting.

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Part B: Purchasing System Reviews

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Tasks	Related Standards
4. Notify the contractor when granting, withholding, or withdrawing purchasing system approval.	<p>Promptly notify the contractor in writing of any purchasing system approval. An approval notification must:</p> <ul style="list-style-type: none">• Identify the plant or plants covered by the approval;• Include the effective date of approval;• State that the system approval:<ul style="list-style-type: none">- Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;- Waives certain contractual requirements for advance notification and consent to subcontract; and- May be withdrawn at any time at the ACO's discretion;• Identify any class or classes of subcontracts requiring consent; and• When recommendations are made for improvement of an approved system, request the contractor to reply within 15 days with a position regarding the recommendations. <p>When approval of the contractor's purchasing system is withheld or withdrawn, notify contractor in writing within 10 days after completing the in-plant review. The notification must:</p> <ul style="list-style-type: none">• Specify the deficiencies that must be corrected to qualify the system for approval; and• Request the contractor to furnish, within 15 days, a plan for accomplishing the necessary actions.

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Tasks	Related Standards
5. Distribute information on purchasing system approval status.	<p>Distribute copies of CPSR reports; notifications granting, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response, to at least:</p> <ul style="list-style-type: none">• The cognizant contract audit office;• Activities prescribed by the cognizant agency; and• The contractor (except that furnishing copies of the contractor's response is optional). <p>Upon request, a prime contractor may be informed that the purchasing system of a proposed subcontractor:</p> <ul style="list-style-type: none">• Has been approved or disapproved (caution that the Government will not keep the contractor advised of any changes in the approval status); or• Has not been reviewed.

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Part B: Purchasing System Reviews

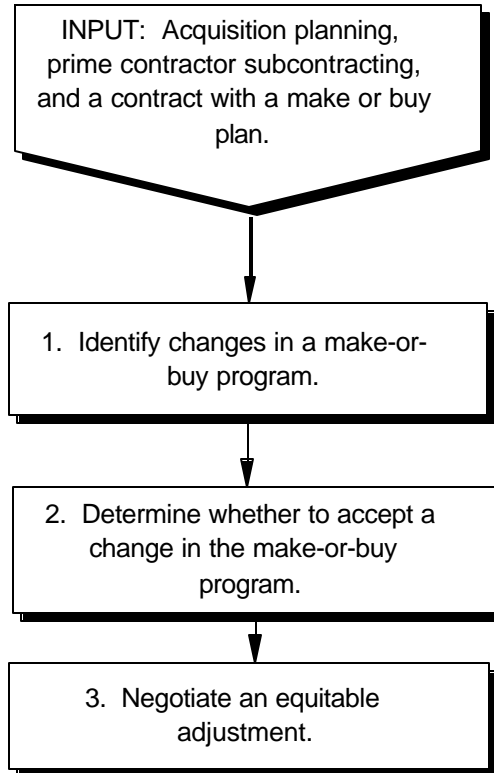
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Tasks	Related Standards
6. Establish a program for contractor purchasing system surveillance.	<p>The ACO must maintain a sufficient level of surveillance to ensure that the contractor is effectively managing its purchasing program.</p> <p>Accomplish surveillance in accordance with a plan developed by the ACO with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan should:</p> <ul style="list-style-type: none"> • Cover pertinent: <ul style="list-style-type: none"> - Phases of a contractor's purchasing system (preaward, postaward, performance, and contract completion); and - Operations that affect the contractor's purchasing and subcontracting; • Provide for reviewing the effectiveness of the contractor's corrective actions taken as a result of previous Government recommendations; • Avoid duplicative reviews of the same areas by CPSR and other surveillance monitors; and • Alert the ACO to any aspect of the purchasing system that is not protecting the Government's interests.
7. Take measures to protect the Government's interests on specific contracts when an ACO denies or withdraws purchasing system approval.	Consider the additional risk to the Government that results from the identified purchasing system weaknesses. In particular, consider purchasing system approval in evaluating subcontract prices.
8. Maintain information on contractor purchasing system status.	<p>The cognizant contract administration office and affected contracting offices should maintain relevant information on purchasing system status, including copies of:</p> <ul style="list-style-type: none"> • CPSR reports; • Notifications granting, withholding, or withdrawing system approval; and • Government recommendations for improvement of an approved system, including the contractor's response.

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Part C: Make or Buy Plans

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Part C: Make or Buy Plans

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Tasks	Related Standards
1. Identify changes in a make-or-buy program.	<p>When a contract includes the Changes or Additions to Make-or-Buy Program clause (FAR 52.215-9), the contractor must perform in accordance with the make-or-buy program incorporated in this contract.</p> <ul style="list-style-type: none">• If the contractor proposes to change the program (including a change in the place of performance or any make item), the contractor must, reasonably in advance of the proposed change:<ul style="list-style-type: none">- Notify the Contracting Officer in writing; and- Submit justification in sufficient detail to permit evaluation.• For items deferred at the time of contract negotiation for later addition to the program, the Contractor must, at the earliest possible time:<ul style="list-style-type: none">- Notify the Contracting Officer of each proposed addition; and- Provide justification in sufficient detail to permit evaluation. <p>Of course, the Contracting Officer should follow up on any other indication that the contractor is not performing in accordance with the make-or-buy program.</p>

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Part C: Make or Buy Plans

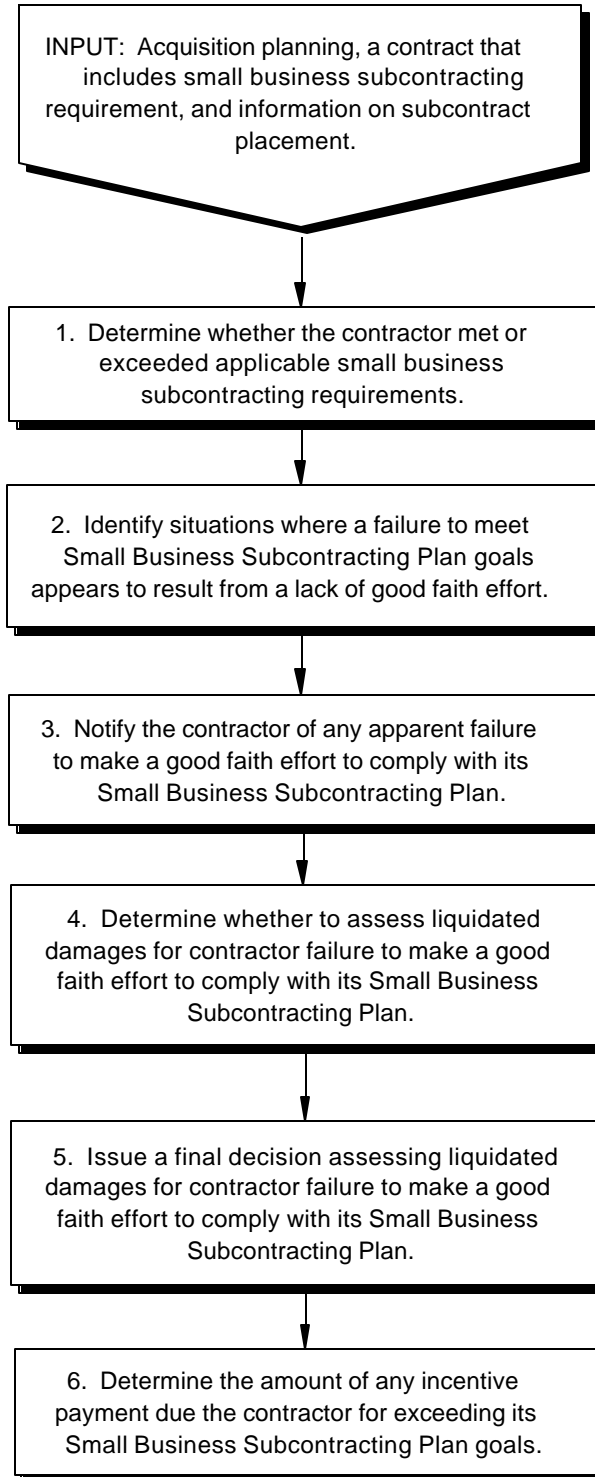
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Tasks	Related Standards
2. Determine whether to accept a change in the make-or-buy program.	<p>Normally, it is not in the Government's best interest to accept changes that would permit the contractor to make supplies or services that:</p> <ul style="list-style-type: none">• Are not regularly manufactured or provided by the contractor and are available – quality, quantity, delivery, and other essential factors considered – from another firm at equal or lower prices; or• Are regularly manufactured or provided by the contractor, but are available – quality, quantity, delivery, and other essential factors considered – from another firm at lower prices. <p>However, the supplies and services above may be accepted as "make items" if:</p> <ul style="list-style-type: none">• An overall lower Government-wide cost would result; or• It is otherwise in the best interest of the Government.
3. Negotiate an equitable adjustment.	<p>Negotiate an equitable adjustment considering the effect of the change on price, schedule, and technical requirements.</p> <p>If the contract includes FAR 52.215-9 Alternate I or Alternate II, consider those requirements during the proposal and negotiation process.</p>

UNIT 51 MONITOR SUBCONTRACT MANAGEMENT

Part D: Small Business Subcontracting

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Part D: Small Business Subcontracting

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Tasks	Related Standards
1. Determine whether the contractor met or exceeded applicable small business subcontracting requirements.	<p>When monitoring compliance with applicable Small Business Subcontracting Plan:</p> <ul style="list-style-type: none">• Review the Subcontracting Reports (e.g., a Subcontracting Report for Individual Contracts (SF 294), or Summary Subcontract Report (SF 295)) required by the plan.• Monitor contractor performance in:<ul style="list-style-type: none">- Attaining the goals established in plan; and- The requirements of the Utilization of Small Business Concerns clause (FAR 52.219-8).• Maintain a record of the contractor's performance against the plan. <p>If the contract includes the Utilization of Small Business Concerns clause, but does not require a Small Business Subcontracting Plan, use information from agency or Small Business Administration monitoring programs to evaluate performance.</p>

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Part D: Small Business Subcontracting

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Tasks	Related Standards
2. Identify situations where a failure to meet Small Business Subcontracting Plan goals appears to result from a lack of good faith effort.	<p>If the contractor fails to meet its subcontracting goals, review all available information for any indication that the contractor has not made a good faith effort to comply with its Small Business Subcontracting Plan.</p> <ul style="list-style-type: none">• Consider the totality of the contractor's actions, consistent with the information and assurances provided in its plan. For example look for indicators, such as the following:<ul style="list-style-type: none">- Failure to attempt to identify, contact, solicit, or consider for contract award appropriate small business concerns;- Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan;- Failure to submit required small business subcontracting reports;- Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; or- Adoption of company policies or procedures that have as their objectives the frustration of plan objectives.• Document the file with the results of the review.<ul style="list-style-type: none">- Identify any findings that indicate a lack of good faith effort; or- State that no indication was found of a lack of good faith effort.

UNIT 51 MONITOR SUBCONTRACT MANAGEMENT

Part D: Small Business Subcontracting

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Tasks	Related Standards
3. Notify the contractor of any apparent failure to make a good faith effort to comply with its Small Business Subcontracting Plan.	<p>Give the contractor written notice:</p> <ul style="list-style-type: none"> • Specifying the failure; • Advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages; • Providing a period of 15 working days (or longer period as necessary) within which to respond with information demonstrating good faith efforts to comply with the plan; and • Stating that failure of the contractor to respond may be taken as an admission that no valid explanation exists.
4. Determine whether to assess liquidated damages for contractor failure to make a good faith effort to comply with its Small Business Subcontracting Plan.	<p>Assess liquidated damages only if available information indicates that the contractor failed to make a good faith effort to comply with its Small Business Subcontracting Plan requirements. In particular, consider any information provided by the contractor in response to the written notice of its apparent failure to make a good faith effort.</p>
5. Issue a final decision assessing liquidated damages for contractor failure to make a good faith effort to comply with its Small Business Subcontracting Plan.	<p>In order to calculate the amount of damages, ask the contractor to provide:</p> <ul style="list-style-type: none"> • Contract numbers for the Government contracts subject to the plan; • The total Government sales during the contractor's fiscal year; and • The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year. <p>Calculate the amount of liquidated damages following the requirements of FAR 19.705-7(f)(4).</p>

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Part D: Small Business Subcontracting

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Tasks	Related Standards
6. Determine the amount of any incentive payment due the contractor for exceeding its Small Business Subcontracting Plan goals.	<p>If the contract includes the Incentive Subcontracting Program clause (FAR 52.219-10) or the Small Disadvantaged Business Participation Program – Incentive Subcontracting clause (FAR 52.219-26), the contractor may be due a monetary incentive if it exceeds related Small Business Subcontracting Plan goals. To determine the amount due the contractor:</p> <ul style="list-style-type: none">• Determine whether the excess was the result of the contractor's effort; and• If the excess was the result of the contractor's effort, calculate the amount of the incentive by multiplying the amount of the excess by the percentage stated in the applicable clause.